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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

JOSEPH WALKER, JR.

CIVIL ACTION NO. 07-1581

VS.

SECTION P

BURL CAIN, WARDEN

JUDGE DOHERTY

MAGISTRATE JUDGE HILL

PARTIAL JUDGMENT

For the reasons stated in the Report and Recommendation of the Magistrate Judge previously filed herein and after an independent review of the record, and a *de novo* determination of the issues, and consideration of the objections filed herein, and having determined that the findings are correct under applicable law;

IT IS ORDERED that petitioner's claim that the Louisiana courts should not have limited review of petitioner's 40 year sentence to "bare excessiveness" because the courts should have considered the grounds raised in petitioner's oral motion to reconsider made at petitioner's first sentencing (claim 1) is **DISMISSED WITH PREJUDICE** because the claim is not cognizable on federal *habeas* review.

IT IS FURTHER ORDERED that petitioner's claim that his forty year sentence is excessive (claim 2) is **DISMISSED WITH PREJUDICE** because the claim is not cognizable on federal *habeas* review, and alternatively, because the claim fails on the merits.

IT IS FURTHER ORDERED that petitioner's claim that he received ineffective

assistance of counsel because counsel failed to request that the jury be given a special instruction on theft (claim 3(a)) is **DISMISSED WITH PREJUDICE**.

IT IS FURTHER ORDERED that petitioner's claim that his counsel was ineffective because he allowed the prosecution to use irrelevant other crimes evidence (claim 3(b)) shall remain pending at this time.

THUS DONE AND SIGNED in Chambers at Lafayette, Louisiana, this 10th
day of March, 2008.


REBECCA F. DOHERTY
UNITED STATES DISTRICT JUDGE